

DEPARTMENT OF LABOR AND INDUSTRY

CHAPTER 213

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#### Sub-Chapter 1

##### Organizational Rule

24.213.101 BOARD ORGANIZATION (1) The board of respiratory care practitioners (hereinafter "board") hereby adopts and incorporates the organizational rules of the department of labor and industry as listed in chapter 1 of this title. (History: 37-28-104, MCA; IMP, 2-4-201, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; TRANS, from Commerce, 2003 MAR p. 1286.)

#### Sub-Chapter 2

##### Procedural Rules

24.213.201 PROCEDURAL RULES (1) The board hereby adopts and incorporates the procedural rules of the department of labor and industry as listed in chapter 2 of this title. (History: 37-28-104, MCA; IMP, 2-4-201, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; TRANS, from Commerce, 2003 MAR p. 1286.)

24.213.202 PUBLIC PARTICIPATION RULES (1) The board hereby adopts and incorporates the public participation rules of the department of commerce as listed in chapter 2 of this title. (History: 37-28-104, MCA; IMP, 2-4-201, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; TRANS, from Commerce, 2003 MAR p. 1286.)

#### Sub-Chapter 3

##### Definitions

24.213.301 DEFINITIONS (1) The board defines "emergency procedures" as that term is used in 37-28-102, MCA, to include, but not be limited to, known and physician-approved protocols relating to life-sustaining procedures in emergency situations in the absence of the immediate direction of a physician. Emergency respiratory care may also be provided during transportation of a patient and under any circumstances where an epidemic, public disaster or other emergency necessitates respiratory care.

(2) For the purposes of 37-28-102(3)(a), MCA, "respiratory care" does not include the delivery, assembly, testing, simulated demonstration of the operation or demonstration of safety and maintenance of respiratory therapy equipment by home medical equipment ("HME") personnel to a client's home, pursuant to the written prescription of a physician. "Respiratory care" does include any instruction to the client regarding clinical use of the equipment, or any monitoring, assessment or other

evaluation of therapeutic effects.

(3) The board defines "clinical supervision" as the availability of a licensed respiratory care practitioner for purposes of immediate communication and consultation.

(4) The board defines "pulse oximetry," "pulmonary function testing" and "spirometry" as diagnostic procedures that, pursuant to the orders of a physician, may be performed only by, or under clinical supervision of, a licensed respiratory care practitioner and/or other licensed health care provider who has met the minimum competency standards. The individual performing pulmonary function testing and spirometry must meet minimum competency standards, as they currently exist, as established by the national institute for occupational safety and health (NIOSH) or the national board for respiratory care (NBRC) certification examination for entry level respiratory therapist, certification examination for entry level pulmonary function technologist (CPFT) credential or registry examination for advanced pulmonary function technologists (RPFT) specific to pulmonary function testing.

(5) The board defines "formal pulmonary function testing" to include, but not be limited to:

- (a) diffusion capacity studies; and
- (b) complete lung volumes and flows.

(6) The board defines "informal screening spirometry" to include, but not be limited to:

- (a) peak expiration flow rate;
- (b) screening spirometry forced expiration volume for one second;
- (c) forced vital capacity; and
- (d) simple vital capacity.

(History: Sections (2) and (3) are advisory only, but may be a correct interpretation of the law, 37-28-104, MCA; IMP, 37-28-101, 37-28-102, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; AMD, 1994 MAR p. 160, Eff. 1/28/94; AMD, 1994 MAR p. 668, Eff. 4/1/94; AMD, 1997 MAR p. 542, Eff. 3/25/97; AMD, 2000 MAR p. 1039, Eff. 4/28/00; AMD, 2001 MAR p. 1096, Eff. 6/22/01; TRANS, from Commerce, 2003 MAR p. 1286; AMD, 2005 MAR p. 453, Eff. 4/1/05.)

#### Sub-Chapter 4

#### General Provisions

24.213.401 FEE SCHEDULE (1) The following fees are hereby adopted:

- |                          |      |
|--------------------------|------|
| (a) Application fee      | \$50 |
| (b) License fee          | 50   |
| (c) Renewal fee          | 100  |
| (d) Temporary permit     | 50   |
| (e) Late renewal fee     | 40   |
| (f) Inactive license fee | 30   |

(History: 37-1-134, 37-28-104, MCA; IMP, 37-28-104, 37-28-202, 37-28-203, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; AMD, 1997 MAR p. 542, Eff. 3/25/97; AMD, 1998 MAR p. 2276, Eff. 8/28/98; AMD, 2001 MAR p. 1096, Eff. 6/22/01; TRANS, from Commerce, 2003 MAR

p. 1286; AMD, 2004 MAR p. 568, Eff. 3/12/04.)

24.213.402 APPLICATION FOR LICENSURE (1) An application for a license or temporary practice permit must be made on a form provided by the board and completed and signed by the applicant with the signature acknowledged before a notary public.

(2) The application must be typed or legibly written in ink, accompanied by the appropriate application and license fees, and contain sufficient evidence that the applicant possesses the qualifications set forth in Title 37, chapter 28, MCA, and rules promulgated thereunder.

(3) The board shall require the applicant to submit original or certified documents in support of the application. The board may permit such documents to be withdrawn upon substitution of a true copy.

(4) The board shall require the applicant to submit a recent, passport-type photograph of the applicant.

(5) The board shall review fully-completed applications for compliance with board law and rules and shall notify the applicant in writing of the results of the evaluation of the application. The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications shall be returned to the applicant with a statement regarding incomplete portions.

(6) The applicant shall correct any deficiencies and resubmit the application. Failure to resubmit the application within 60 days shall be treated as a voluntary withdrawal of the application. After voluntary withdrawal, an applicant will be required to submit an entirely new application to begin the process again.

(7) All requests for reasonable accommodations under the Americans with Disabilities Act of 1990, at 42 USC sections 12101, et seq., must be made on forms provided by the board and submitted with the application prior to any application deadline set by the board.

(8) An applicant who has been away from the practice of the profession of respiratory care for more than three years shall provide evidence of competency. The applicant may demonstrate competency by:

(a) providing proof of completion (within the last 60 months) of a minimum of 30 hours of continuing education acceptable to the board;

(b) retaking the respective examination(s) for the credential being renewed and achieving a passing score; or

(c) passing another national board for respiratory care (NBRC) credentialing examination, not previously completed. (History: 37-28-104, MCA; IMP, 37-28-201, 37-28-202, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; AMD, 1993 MAR p. 2125, Eff. 9/17/93; AMD, 1997 MAR p. 542, Eff. 3/25/97; TRANS, from Commerce, 2003 MAR p. 1286; AMD, 2005 MAR p. 453, Eff. 4/1/05.)

24.213.403 ABATEMENT OF RENEWAL FEES (1) This rule is

intended to provide a process whereby the board may reduce its cash balance when the board's cash balance is excessive. This rule provides for an abatement of certain fees when that cash balance is excessive.

(2) Except as provided by (3), when the board has an excessive cash balance, the department may abate the renewal fees for its licensees or registrants for one or more renewal cycles until the board's cash balance does not exceed allowable maximums.

(a) The abatement of renewal fees may be the total amount of the renewal fee or a specified portion of that fee.

(b) If the board has more than one category of renewals, the abatement must be made on a roughly proportional basis to fairly, equitably, reasonably and economically distribute the abatement among the program's licensees or registrants. The department may, for good cause, completely abate the renewal fee for certain classes of licensees or registrants and not for other classes, if the administrative cost of processing a reduced renewal for all classes is disproportionately high. In such case, the department must attempt in any future abatements to equitably treat those classes of renewals which have borne a relatively higher proportion of renewal fees.

(c) The fact that a renewal fee is abated for any given renewal cycle does not excuse the licensee or registrant from otherwise fulfilling renewal requirements, including submission of a renewal application and any continuing education documentation. The board, to the extent it provides by rule, may impose a late fee on untimely submissions of renewal applications or other required documentation.

(3) This rule will not apply when an exception to 17-2-302, MCA, exists and is applicable to the board's cash balance.

(As an example, if the board adopts a three-year renewal cycle, the board will have an apparent excess cash balance during the first year of the renewal cycle, based upon a collection of three years worth of fees for operational expense.)

(4) This rule does not relieve the board from the duty of establishing fees at a level commensurate with costs. (History: 37-1-101, 37-1-131, MCA; IMP 17-2-302, 17-2-303, 37-1-101, 37-1-131, 37-1-134, MCA; NEW, 2004 MAR p. 568, Eff. 3/12/04.)

Rule 24.213.404 reserved

24.213.405 TEMPORARY PERMIT (1) An applicant for a temporary practice permit shall have graduated within the 30 days prior to the date of application for the temporary practice permit.

(a) A temporary practice permit will only be issued if the applicant is scheduled to take the NBRC examination within 30 days of applying for the temporary practice permit.

(b) A temporary practice permit expires not later than 45 days after it is issued.

(2) The application fee for a temporary practice permit may be applied to the application fee for a licensed respiratory care practitioner if that temporary permit holder applies for

the licensed respiratory care practitioner's license within 45 days from the issuance of the temporary practice permit.

(3) Temporary permit holders must practice only under clinical supervision. (History: 37-28-104, MCA; IMP, 37-1-305, 37-28-206, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; AMD, 1993 MAR p. 2125, Eff. 9/17/93; AMD, 1997 MAR p. 542, Eff. 3/25/97, TRANS, from Commerce, 2003 MAR p. 1286; AMD, 2005 MAR p. 453, Eff. 4/1/05.)

Rules 24.213.406 and 24.213.407 reserved

24.213.408 EXAMINATION (1) The board determines that a scaled score of 75 on a 0 to 99 scale of the certification examination for entry-level respiratory therapy practitioners examination, or the registry examination, utilized by the national board of respiratory care, shall be prescribed as the accepted testing requirement for licensing in this state.

(2) Applicants for original licensure shall provide evidence that they have successfully passed the examination. (History: 37-28-104, MCA; IMP, 37-28-104, 37-28-202, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; AMD, 1997 MAR p. 542, Eff. 3/25/97; TRANS, from Commerce, 2003 MAR p. 1286; AMD, 2005 MAR p. 453, Eff. 4/1/05.)

Rules 24.213.409 through 24.213.411 reserved

24.213.412 PROCEDURES FOR RENEWAL (1) The board shall mail the renewal notice approximately six to eight weeks in advance of the renewal date to the licensee's address on file with the board. Failure to receive the renewal notice does not relieve the licensee from the obligation to renew in a timely manner.

(2) Licenses expire every even numbered year on the renewal date set forth in ARM 8.2.208.

(3) Licensees may renew their licenses for a period of three years from the expiration date of the license by submitting a renewal form, one renewal fee and one late fee and documentation of the continuing education that would have been required had the license been renewed in a timely manner. A license that is not renewed within three years of the most recent renewal date automatically terminates. The terminated license may not be reinstated, and a new original license must be obtained by passing the certifying examination and paying the appropriate fees. (History: 37-28-104, MCA; IMP, 37-28-203, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; AMD, 1993 MAR p. 2125, Eff. 9/17/93; AMD, 1997 MAR p. 542, Eff. 3/25/97; AMD, 2000 MAR p. 1039, Eff. 4/28/00; TRANS, from Commerce, 2003 MAR p. 1286.)

Rules 24.213.413 and 24.213.414 reserved

24.213.415 INACTIVE STATUS (1) A licensee who wishes to retain a license but who will not be practicing respiratory care may obtain inactive status by indicating this intention on the biennial renewal form or by submission of an application and

payment of the appropriate fee. An individual licensed on inactive status may not practice respiratory care during the period in which he or she remains on inactive status.

(2) An individual licensed on inactive status may convert his or her license to active status by submission of an appropriate application and payment of the renewal fee for the year in question. The application must contain evidence of one of the following:

(a) full-time practice of respiratory care in another state and completion of continuing education for each year of inactive status, substantially equivalent, in the opinion of the board, to that required under these rules; or

(b) completion of a minimum of 24 continuing education units within two years prior to application for reinstatement.

(3) In no case may an individual remain on inactive status for more than three years. Documentation of the continuing education that would have been submitted had the license been renewed in a timely manner shall be required. (History: 37-1-131, 37-1-141, 37-28-104, MCA; IMP, 37-1-319, MCA; NEW, 1997 MAR p. 542, Eff. 3/25/97; AMD, 2000 MAR p. 1039, Eff. 4/28/00; TRANS, from Commerce, 2003 MAR p. 1286.)

Rules 24.213.416 through 24.213.420 reserved

24.213.421 BOARD SEAL (1) The seal of the board shall bear the words "State of Montana Board of Respiratory Care Practitioners." (History: 37-28-103, 37-28-104, MCA; IMP, 37-28-103, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; TRANS, from Commerce, 2003 MAR p. 1286.)

## Sub-Chapter 5

### Sedation

24.213.501 INSTITUTIONAL GUIDELINES CONCERNING EDUCATION AND CERTIFICATION -- WHEN REQUIRED (1) Respiratory care practitioners shall meet the adopted specific guidelines regarding education and training of those institutions that use or employ respiratory care practitioners who administer intravenous (IV) conscious sedation.

(2) The board recommends the following be incorporated as minimum standards into an institution's guidelines regarding conscious sedation:

(a) at least one qualified individual trained in basic life support skills, such as CPR and bag-valve-mask ventilation, should be present in the procedure room; and

(b) there must be immediate availability (not more than five minutes away) of an individual with advanced life support skills training and equipment, such as tracheal intubation, defibrillation, and resuscitation medications.

(3) The board recommends regarding conscious sedation that an individual with advanced life support skills training and equipment, such as tracheal intubation, defibrillation, and resuscitation medications, be present in the procedure room.



(4) The board requires that all respiratory care practitioners performing IV conscious sedation have advanced cardiac life support (ACLS) certification.

(5) The board recommends that individuals responsible for patients receiving sedation or analgesia should understand the pharmacology of the agents that are administered, as well as the role of pharmacologic antagonists for opioids and benzodiazepines. Individuals monitoring patients receiving sedation or analgesia should be able to recognize the associated complications. (History: 37-1-131, 37-28-104, MCA; IMP, 37-28-101, 37-28-102, MCA; NEW, 2005 MAR p. 453, Eff. 4/1/05.)

Rules 24.213.502 and 24.213.503 reserved

24.213.504 AUTHORIZATION TO PERFORM FORMAL PULMONARY FUNCTION TESTING AND INFORMAL, BASIC SCREENING SPIROMETRY

(1) Properly licensed health care providers performing informal pulmonary function testing or spirometry should meet minimum competency standards as established by the national institute for occupational safety and health (NIOSH) or the national board for respiratory care (NBRC).

(2) A licensee is authorized to perform formal pulmonary function testing and spirometry if the individual has passed any one of the following certification or registry examinations:

- (a) entry level respiratory therapist (CRT);
- (b) advanced level respiratory therapist (RRT);
- (c) entry level pulmonary function technologist (CPFT); or
- (d) advanced pulmonary function technologist (RPFT).

(History: 37-1-131, 37-28-104, MCA; IMP, 37-1-131, 37-28-102, 37-28-104, MCA; NEW, 2005 MAR p. 453, Eff. 4/1/05.)

Sub-Chapters 6 through 20 reserved

Sub-Chapter 21

Continuing Education

24.213.2101 CONTINUING EDUCATION REQUIREMENTS (1) Upon biennial renewal of licensure, each respiratory care practitioner must affirm on the renewal form that he/she has completed 24 continuing education units in the preceding 24 months. One continuing education unit is equivalent to 50 minutes in length.

(2) It is the sole responsibility of each licensee to meet the continuing education requirement, and to provide documentation of his/her compliance if so requested during a random audit. The random audit will be conducted on a biennial basis. The board will not permit excess units to be carried over from one licensing renewal cycle to the next.

(3) A licensee who fails to obtain a sufficient number of continuing education units may satisfy the requirement by taking and passing the national board of respiratory care certified respiratory therapy technician examination or the registered respiratory therapy examination during the preceding 24 months.

(4) The continuing education requirements will not apply until the licensee's first full year of licensure.

(5) Courses acceptable for continuing education shall be those whose content is relevant to the scope of practice of respiratory care as defined in 37-28-102, MCA.

(6) Any identical course or program presented under category I or category II may be submitted for continuing education credit only once every two years.

(7) If documentation of the continuing education requirement is improper or inadequate, the respiratory care practitioner shall correct the deficiency. If the requirement is not completed within 90 days, the license shall be revoked and the renewal fee forfeited. Misrepresentation of compliance shall constitute grounds for disciplinary action. (History: 37-28-104, MCA; IMP, 37-28-104, 37-28-203, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; AMD, 1993 MAR p. 2125, Eff. 9/17/93; AMD, 1994 MAR p. 3093, Eff. 12/9/94; AMD, 1998 MAR p. 2276, Eff. 8/28/98; AMD, 2000 MAR p. 1039, Eff. 4/28/00; TRANS, from Commerce, 2003 MAR p. 1286.)

Rules 24.213.2102 and 24.213.2103 reserved

24.213.2104                      TRADITIONAL EDUCATION BY SPONSORED ORGANIZATIONS -- CATEGORY I (1) Continuing education programs sponsored by the following organizations which are germane to the profession of respiratory care, are approved by the board:

(a) Institutions approved by the joint review committee for respiratory therapy education, respiratory care accreditation board or other successor accreditation organizations and courses approved by the American association for respiratory care, the Montana society for respiratory care, the American thoracic societies, the American college of cardiology, the American college of chest physicians, the American nurses association, the national society for cardiopulmonary technologists, the American lung association, the American lung association of Montana, the Montana heart association, the Montana and American medical association, the Montana hospital association and respiratory care journal (American association of respiratory care sponsored).

(b) Approved activities in this category include:

(i) seminars;  
(ii) workshops;  
(iii) conferences;  
(iv) in-service program; and  
(v) correspondence courses accompanied by a study guide, syllabus, bibliography and/or examination.

(2) All units in this category must be documented by evidence provided by the instructor or the sponsoring organization. (History: 37-28-104, MCA; IMP, 37-28-104, 37-28-203, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; AMD, 1994 MAR p. 3093, Eff. 12/9/94; AMD, 1997 MAR p. 542, Eff. 3/25/97; TRANS, from Commerce, 2003 MAR p. 1286.)

Rules 24.213.2105 and 24.213.2106 reserved

24.213.2107 TRADITIONAL EDUCATION BY NON-SPONSORED ORGANIZATIONS -- CATEGORY II (1) Continuing education activities which do not meet the definition of ARM 24.213.2104 may be submitted for review by the Montana board of respiratory care for approval.

(2) Approved activities in this category may include seminars, workshops, conferences, in-service programs and correspondence courses accompanied by a study guide, syllabus, bibliography and examination.

(3) All credit units derived from continuing education activities in this section must be attached to the renewal form. Documentation must include a statement of the activity, its title, name of instructor, the instructor's credentials and length of course.

(4) The board, in its discretion, reserves the right to deny credit for continuing education units in this category that do not receive prior approval from the board. (History: 37-28-104, MCA; IMP, 37-28-104, 37-28-203, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; AMD, 1994 MAR p. 3093, Eff. 12/9/94; TRANS, from Commerce, 2003 MAR p. 1286.)

Rules 24.213.2108 through 24.213.2110 reserved

24.213.2111 TEACHING -- CATEGORY III (1) No more than eight credit units may be applied in this category based on a report by the licensee, with credit units being awarded on a two-to-one ratio. For a one hour presentation, the presenter will be awarded two credit units.

(2) This includes teaching addressed to allied health professionals. Any given activity may be submitted for continuing education credit units only once.

(3) Credit units spent in preparation, review and/or evaluation of activities which are different from the applicant's usual and customary professional employment, and which are not requested as credits in any other category may be submitted under this section.

(4) Individuals employed by universities and colleges may not claim credit units in this section for conducting courses that are a part of the regular course offering of those institutions, even if those courses are offered in the evening or summer, or for individuals enrolled in a degree program or vocational technical schools.

(5) The board, in its discretion, reserves the right to deny credit for continuing education units in this category that did not receive prior approval of the board. (History: 37-28-104, MCA; IMP, 37-28-104, 37-28-203, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; AMD, 1994 MAR p. 3093, Eff. 12/9/94; TRANS, from Commerce, 2003 MAR p. 1286.)

Rules 24.213.2112 and 24.213.2113 reserved

24.213.2114 PAPERS, PUBLICATIONS, JOURNALS, EXHIBITS, VIDEOTAPES, INDEPENDENT STUDY AND COLLEGE COURSE WORK --

CATEGORY IV (1) A maximum of eight credit units not sponsored by organizations listed by ARM 24.213.2104, may be applied in this category based upon report by the licensee.

(2) An outline of the objectives or a reference citation for the paper, journal, videotape, etc., germane to the profession must be submitted to the board.

(3) Any given activity can be used for continuing education credit units only once.

(4) College course work, which is germane to the profession and contributes directly to the professional competence of the respiratory care practitioner, may be claimed in this section in the following manner:

(a) one semester hour is equal to 1.5 continuing education units;

(b) one quarter hour is equal to one continuing education unit.

(5) The board, in its discretion, reserves the right to deny credit for continuing education in this category that did not receive prior approval of the board. (History: 37-28-104, MCA; IMP, 37-28-104, 37-28-203, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; AMD, 1994 MAR p. 3093, Eff. 12/9/94; TRANS, from Commerce, 2003 MAR p. 1286.)

Rules 24.213.2115 through 24.213.2120 reserved

#### 24.213.2121 WAIVER OF CONTINUING EDUCATION REQUIREMENT

(1) In the event of hardship such as a disabling illness or other personal emergency which substantially interferes with a licensee's ability to meet the minimum requirement of 12 credit units prior to the deadline, the board may approve a waiver of the continuing education requirement. There must be a written request submitted to the board by the renewal date. Such request for approval for a waiver shall be in writing and shall set forth the reasons why the licensee was unable to earn the minimum number of credit units required prior to the deadline. (History: 37-28-104, MCA; IMP, 37-28-104, 37-28-203, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; AMD, 1994 MAR p. 3093, Eff. 12/9/94; TRANS, from Commerce, 2003 MAR p. 1286.)

Sub-Chapter 22 reserved

Sub-Chapter 23

License Discipline

24.213.2301 UNPROFESSIONAL CONDUCT In addition to 37-1-316, MCA, the board defines "unprofessional conduct" as follows:

(1) Intentional or negligent physical, verbal or mental abuse of a client in a clinical setting;

(2) Failing to safeguard the client's dignity or right to privacy;

(3) Diverting drugs, supplies or property of patients or health care providers;

(4) Falsifying, altering or making incorrect essential

entries or failing to make essential entries of client records;

(5) Using a firm name, letterhead, publication, term, title, designation or document which states or implies an ability, relationship or qualification that does not exist;

(6) Practicing the profession under a false name or name other than the name under which the license is held;

(7) Impersonating any licensee or representing oneself as a licensee for which one has no current license;

(8) Charging a client or a third-party payor for a service not performed;

(9) Submitting an account or charge for services that are false or misleading. This does not apply to charging for an unkept appointment;

(10) Filing a complaint with, or providing information to the board which the licensee knows or ought to know is false or misleading. This provision does not apply to any filing of complaint or providing information to the board when done in good faith;

(11) Violating, or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision of Title 37, chapter 28, MCA, or rule promulgated thereunder, or any order of the board;

(12) Violating any state, federal, provincial or tribal statute or administrative rule governing or affecting the professional conduct of any licensee;

(13) Being convicted of a misdemeanor or any felony involving the use, consumption or self-administration of any dangerous drug, controlled substance or alcoholic beverage, or any combination of such substances;

(14) Using any dangerous drug or controlled substance illegally while providing professional services;

(15) Acting in such a manner as to present a danger to public health or safety, or to any client including, but not limited to, incompetence, negligence or malpractice;

(16) Maintaining an unsanitary or unsafe office or practicing under unsanitary or unsafe conditions;

(17) Performing services outside of the licensee's area of training, expertise, competence or scope of practice or licensure;

(18) Failing to obtain an appropriate consultation or make an appropriate referral when the problem of the client is beyond the licensee's training, experience or competence;

(19) Maintaining a relationship with a client that is likely to impair the licensee's professional judgment or increase the risk of client exploitation including providing services to employees, supervisees, close colleagues or relatives;

(20) Exercising influence on or control over a client, including the promotion or the sale of services, goods, property or drugs for the financial gain of the licensee or a third party;

(21) Promoting for personal gain any drug, device, treatment, procedure, product or service which is unnecessary, ineffective or unsafe;

(22) Charging a fee that is clearly excessive in relation to the service or product for which it is charged;

(23) Failing to render adequate supervision, management, training or control of auxiliary staff or other persons, including licensee, practicing under the licensee's supervision or control according to generally-accepted standards of practice;

(24) Discontinuing professional services unless services have been completed, the client requests the discontinuation, alternative or replacement services are arranged, or the client is given reasonable opportunity to arrange alternative or replacement services;

(25) Delegating a professional responsibility to a person when the licensee knows, or has reason to know, that the person is not qualified by training, experience, license or certification to perform the delegated task. A professional responsibility that may not be delegated, includes, but is not limited to, pulse oximetry;

(26) Accepting, directly or indirectly, employment from any person who is not licensed to practice the profession or occupation, or who is not licensed or authorized to operate a professional practice or business;

(27) Failing to cooperate with a board inspection or investigation in any material respect;

(28) Failing to report an incident of unsafe practice or unethical conduct of another licensee to the licensing authority;

(29) Failing to obtain informed consent from patient or patient's representative prior to providing any therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related care;

(30) Employing a nontraditional or experimental treatment or diagnostic process without informed consent from patient or patient's representative prior to such diagnostic procedure or treatment, or research, or which is inconsistent with the health or safety of the patient or public;

(31) Guaranteeing that a cure will result from the performance of medical services;

(32) Ordering, performing or administering, without clinical justification, tests, studies, x-rays, treatments or services;

(33) Possessing, using, prescribing for use or distributing controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diverting controlled substances or legend drugs, violating any drug law or prescribing controlled substances for oneself;

(34) Prescribing, dispensing or furnishing any prescription drug without a prior examination and a medical indication therefor;

(35) Failing to provide to a patient, patient's representative or an authorized health care practitioner, upon a written request, the medical record or a copy of the medical record relating to the patient which is in the possession or under the control of the professional. Prior payment for

professional services to which the records relate, other than photocopy charges, may not be required as a condition of making the records available;

(36) Engaging in sexual contact, sexual intrusion or sexual penetration, as defined in Title 45, chapter 2, MCA, with a client during a period of time in which a professional relationship exists; or

(37) Failing to account for funds received in connection with any services rendered or to be rendered.

(38) Failure to supply continuing education documentation as requested by the audit procedure set forth in ARM 24.213.2101 or supplying misleading, incomplete or false information relative to continuing education taken by the licensee. (History: 37-28-104, MCA; IMP, 37-28-210, MCA; NEW, 1992 MAR p. 913, Eff. 5/1/92; AMD, 1997 MAR p. 542, Eff. 3/25/97; AMD, 1998 MAR p. 2276, Eff. 8/28/98; TRANS, from Commerce, 2003 MAR p. 1286.)